

SECTION 9 PRIMACY REVISION APPLICATION PROCESS

To be in compliance with the Safe Drinking Water Act, you must demonstrate to the EPA that your State's statutes, regulations, forms, procedures and other primacy elements, include requirements equivalent to, or more stringent than the new minimum Federal requirements for Class V wells published in the Federal Register on December 7, 1999 (64 FR 68546). The purpose of this implementation guide is to help you prepare a primacy revision application that will satisfy the new minimum Federal requirements for Class V wells, hereafter referred to as the Class V rule. Throughout the guide are references to the location of the minimum Federal requirements in the Code of Federal Regulations (CFR), (for example, "Procedures for Revision of State Programs" at 40 CFR 145.32). We have also provided three "short forms" at the end of this guide to reduce your application workload. These are the forms: (1) the Program Description Guide; (2) the Primacy Revision Crosswalk; and (3) the State Primacy Revision Checklist. These forms describe exactly what information that the EPA requires in your primacy revision application.

- A. Does My State have to submit a primacy revision application to the EPA?

Contact your EPA Regional Office to find out if your current §1422 program requires "substantial" or "non substantial" revisions to comply with the Class V rule.

The Regional Office will tell you if your program revisions are substantial or non substantial. Substantial revisions are rule making and must be approved by the EPA Administrator. This means that you must submit a primacy revision application. Non substantial revisions do not require rule making, and can be approved by a letter from the Regional Administrator to the Governor. This means that *you may not* have to submit a primacy revision application.

Your EPA Regional Office will also explain the revision process, help you prepare the application, provide you the short forms in electronic format, and establish a timetable for the draft and final applications.

- B. When am I Required to Submit a Primacy Revision Application to the EPA?

You must submit a complete and final primacy revision application to your Regional office no later than December 29, 2000.

The new Class V rule, is effective on April 5, 2000, which is 120 days after the publication date, December 7, 1999. As a State with primary enforcement authority (primacy) for Class V wells, you have 270 days from the effective date of the rule to submit

a revised primacy application to maintain primacy for the UIC Program under §1422 of SDWA. (See: §145.32(e))¹.

Within that time frame you should:

- (1) Review your existing program in light of the new Class V Rule
- (2) Determine what programmatic changes you need to make
- (3) Adopt new statutes and/or regulations as necessary
- (4) Submit a final primacy revision package to the EPA.

We encourage you to incorporate the Class V rule into your State statutes and regulations, forms, procedures and other primacy elements, and submit a complete and final primacy revision application to your EPA Regional Office at the earliest possible date.

Early submission will expedite the EPA's review and approval of your application. Please contact the Office of the *Federal Register* for its format and content requirements for publication.

C. What is the EPA's Process for a State Program Revision?

We recommend you apply for program approval in a two-step process.

STEP ONE: Submit a draft of your application to the Regional Office before you submit a final.

The EPA's step one is optional, but should greatly reduce your workload and will definitely expedite our review and approval of your application. We recommend that you discuss the advantages of submitting a draft with your Regional Office. Review of draft materials allows the EPA to identify any significant issues and resolve them with you prior to the formal review of the final revision application. The Regional Office will determine what you need to include in the draft application and when you need to send it.

¹40 CFR 145.32(e) requires that you submit this information within 270 days of any amendment to 40 CFR Parts 144, 145, 146, or 124 that "revises or adds any requirement respecting an approved UIC program." Since the Class V rule amends portions of Parts 144, 145, and 146, this 270-day time frame applies to all §1422 programs.

We will make every effort to provide comments on each draft submission within 45 days of receiving the document(s), and are committed to completing all draft reviews within 60 days.

Our comments will list any changes that must be made before the package would be considered complete.

STEP TWO: Prepare and submit one original and two complete copies of the final application to your Regional Office.

Three sets of the applications are the minimum: one for the Regional review, one for the Headquarters review, and the original for a permanent record. Remember that your Regional Office should receive a complete and final primacy revision application no later than December 29, 2000, to satisfy the 270-day deadline. Your final adoption of the rule must have been accomplished and the state version of the rule must be effective before the EPA can approve your primacy revision application. This time frame further emphasizes that early adoption of your rules and active dialogue with the Region play key roles in the preparation of an approvable application. *We urge you to ask the Region about the benefits of using the short forms.*

After receipt of your final revision application, we will notify you in writing if the primacy revision application is complete.²

The EPA will review the complete application package both at the Regional and Headquarters level. The review team will include UIC programmatic, enforcement and compliance, and legal staff. For this formal, final application, we will develop and send you written comments on the package, and you will need to respond to those comments.

We are required to publish a public notice that we have received a request for EPA approval of substantial revisions to your § 1422 program in the *Federal Register*, mail the notice to interested persons, and publish it in enough large newspapers in your State to provide Statewide coverage.

This notice summarizes your proposed revisions and provides opportunity to the public to request a public hearing, as well as provide at least 30 days for the public to comment upon the proposed changes to your program. If there is significant public interest expressed in response to the public notice, we are required to hold a public hearing.

² Please note that a determination that your application is complete does not equate to it being approvable.

D. What Do I Need to Include in the Primacy Revision Application?

If you have revised any of the following mandatory program elements, you must include the revised elements in the application. Generally, you will have to modify all of the mandatory Program Elements described below (40 CFR 145.32).

This table contains the minimum mandatory elements to be addressed by the primacy revision application. Ask the EPA Regional Office if EPA will require you to include additional elements.

Table 9.1 - Mandatory Elements of a Primacy Program

Program Element - Revise as Required	Include in application:
State UIC Program Description	A copy of Modified Text (see Table below which describes components of Program Description)
Authorizing Legislation and/or Regulation(s)	A copy(s) of Modified Text showing effective date
Attorney General's Statement of Enforceability	A signed and dated copy of Modified AG Statement
Memorandum of Agreement between State and Regional Administrator	A signed and dated copy of letter from Regional Administrator to Governor or Designee
Other Sensitive Ground Water Area Plan ³	A detailed copy of the plan or a statement that your State will not identify Other Sensitive Ground Water Areas.

³ Alternately, if your State chooses not to identify other sensitive ground water areas, the requirements for motor vehicle waste disposal wells will apply statewide by January 1, 2007. Either way, you must indicate your choice in the application.

MANDATORY ELEMENTS

1. Program Description: The primacy revision application must include a copy of the text of the modified program description that reflects incorporation of the new rule and how you plan to implement it (40 CFR 145.32(b)(1)). We have provided you a “short form” which you will find at Appendix 9.1 that describes what to include in your revisions.

If You Transfer Authority to another Agency . . .	Include These Revisions in the Program Description:
MOUs between the lead State Agency and another State Agency	<ul style="list-style-type: none"> -A signed and dated copy of all MOUs that describe transfer of part or all authority to another agency - A copy of new organization chart(s) and structures(s) of lead agency and other agency(s) -If more than one agency is responsible for administration of a program, each agency must have statewide jurisdiction (§145.23(b) over a class of activities. The new agency is not authorized to administer the program until EPA's Administrator approves the primacy revision application (§145.32(c)).⁴ - The new agency must not permit any new large-capacity cesspools and/or new motor vehicle waste disposal wells (whichever wells are under the authority of the new agency) effective April 5, 2000 - Include revisions to: (1) Federal grant distribution arrangements; (2) the organization chart and/or structure of each agency that has responsibility to administer all or part of the §1422 program that relates to Class V (40 CFR 145.25 and 145.32); and, (3) information exchanges such as inventory records, closures, peer review, and enforcement.
If You Coordinate with a Local Agency(s) . . .	
MOU between State Agency(s) and a Local Agency(s)	<ul style="list-style-type: none"> - At a minimum, clearly explain how responsibilities will be carried out. FOR EXAMPLE: how the other agency will: (1) relay information about implementation activities to your State UIC Program Director to include in reports to the EPA; (2) provide documentation that owners/operators have submitted pre-closure notifications; and (3) provide documentation of closures of the two well types.⁵

⁴ FOR EXAMPLE: the State Department of Health (DOH) (with statewide jurisdiction for a class of Class V activities) The ultimate program responsibility (primacy) still lies within the lead State agency.

⁵ FOR EXAMPLE: the DOH may develop an agreement with local health departments to assist the State in implementation of existing an/or new Class V rule requirements.

2. Authorizing Legislation and Regulations: The primacy revision application must include the text of modified authorizing legislation and regulations (40 CFR 145.32(b)(1)).

IMPORTANT: These cannot be copies of the text of “proposed” rule(s), but must be copies of the text of the authorizing legislation and regulations that have been fully adopted and currently effective in your State at the time you submit your primacy revision application.⁶

3. Attorney General’s Statement⁷: The primacy revision application must contain an Attorney General’s (AG) Statement certifying that the State government will have the authority, by statute and/or regulation, to enforce the new Class V rule, and that the revised program will be fully effective on the date the EPA approves the application. You may want to include your completed “Primacy Revision Crosswalk” in the AG statement, as a supporting document.

4. Memorandum of Agreement (MOA) between State and Regional

Administrator: The primacy revision application must contain an MOA that reflects agreement between the State and EPA on how the State will administer and enforce the new Class V rule. You will find the minimum Federal requirements for the MOA with the Regional Administrator at 40 CFR 145.25.

5. Other Sensitive Ground Water Plan: Your modified program description included in your primacy revision application must include a plan that describes, and gives a schedule for, identifying and delineating other sensitive ground water areas in your State, or a statement that your State does not intend to identify these areas. Otherwise, the application is incomplete and will not be approved. 40 CFR 145.23(f)(12) provides items that States are expected to consider in the plan and its implementation. The Technical Assistance Document for Delineating Other Sensitive Ground Water Areas outlines what a State should consider when submitting their plan. This guidance is found in Appendix G .

Here is a table which describes the benefits to use the three “short forms.” They include the EPA’s minimum requirements and will reduce your workload and speed up EPA’s approval process. Ask your EPA Regional Office for the forms in electronic format.

⁶ If your State publishes a document similar to the *Federal Register*, a copy of that will suffice. If you don’t have that type of publication, the copies of authorizing legislation and regulations must have the signatures and/or stamps used in your state to show the rule has been passed by appropriate authorities and an effective date for implementation.

⁷You will find the minimum Federal requirements for the AG statement at 40 CFR 145.24.

Table 9.2 - List of Three “Short Forms” for Primacy Revision Application

Tables	Explanation
Program Description Revision Guide	This guide makes it easy to find what you may have to revise, what the minimum Federal requirements are, and what the EPA expects to review. Following this guide should greatly reduce the revision process.
Primacy Revision Crosswalk (A rule by rule comparison of your changes compared to the EPA minimum standards) ⁸	Use this to demonstrate that your State has the regulatory authority to enforce all the new minimum Federal requirements that exist in your State Program. <i>Where your State regulation or statute is different from the Federal requirement, please, use the last column of the Crosswalk to explain how your requirement is as stringent as the Federal requirement.</i>
State Primacy Revision Checklist ⁹	This checklist will help you and EPA ensure that the final application is complete. Identify all program elements you have revised in response to the new or revised Federal requirements. Mark a “yes” or “no” response in the column adjacent to the list of program elements. If you indicate “yes,” please include specific information or documentation relative to the change in the application. We will insert our findings and comments in the last column of the checklist. We can provide the checklist in electronic format, if you would like. Please ask your Regional contact for a copy, and we will gladly provide them for your use.

⁸ On pages 12 through 18. Since this checklist will support the Attorney General's Statement of Enforceability so well, we strongly encourage you to include it as part of your primacy revision application.

⁹ On pages 19 through 20.

APPENDIX 9.1

Program Description Revision Guide

To be complete, your primacy revision application must include all substantial modifications to the existing §1422 program description that affect how you implement and enforce the new minimum Federal requirements.¹⁰

To make the program description revision process less burdensome for you, we are providing you this guide to ensure that your program description will be complete. The table below presents:

- the minimum Federal requirements that you need to address in the Program Description,
- where you can find them in the Code of Federal Regulations, and
- what the EPA reviewers will be looking for.

Minimum Federal Requirements for a UIC Program Description 40 CFR 145.23		
Federal Rule Citation	Portions of Minimum Federal Requirement That You Must Address	EPA's Expectation
§145.23(a): Narrative Program description.	Description in narrative form of the scope, structure, coverage and processes of the State Program.	- Text of revisions to your existing program that are necessary to comply with new Class V rule
§145.23(b): Organization and Structure	Description of the organization and structure of the State agency or agencies which will have responsibility for administering the program. - Description must include organization charts. - If more than one agency responsible for program administration, each agency must have statewide jurisdiction over a class of activities.	- Text of revisions to the existing organization and structure of your State agency(s) that will administer new Class rule - Revised organization charts for each agency that will administer new Class V rule -(If applicable) Notification that you will transfer authority to administer part or all of the new Class V rule to another State agency(s)

¹⁰ If you want to include every modification made to your existing EPA-approved program description in your application, we encourage you to do so.

Minimum Federal Requirements for a UIC Program Description 40 CFR 145.23		
Federal Rule Citation	Portions of Minimum Federal Requirement That You Must Address	EPA's Expectation
	<ul style="list-style-type: none"> - Responsibilities of each agency must be delineated, their procedures for coordination set forth, and an agency may be designated as a "lead agency" to facilitate communications between EPA and the State agencies. - When State proposes to administer a program of greater scope of coverage than required by Federal law, information provided under §145.23 shall indicate the resources dedicated to administering the Federally required program portion(s). 	<ul style="list-style-type: none"> - Text of change in designated "lead agency" that will administer part or all of the new Class V rule. Also, text of changes to Federal and/or grant distribution and grant pass-through agreements (if applicable) - Text of changes to the amount of the Federal UIC grant that you dedicate to administering the new Class V rule
§145.23(b)(1): Staffing	A description of the State agency staff who will carry out the State program, including: number, occupations, and general duties.	- Text of changes to the staff in each State agency that will administer the new Class V rule, including number, occupations, and general duties.
§145.23(b)(2): Program Costs	Itemization of estimated costs of establishing and administering the program for including cost of the personnel listed in §145.23(b)(1), cost of administrative support, and cost of technical support.	- Text of total annual cost (estimate) to administer the new Class V rule
§145.23(b)(3): Funding	Itemization of sources and amounts of Program funding, including an estimate of Federal grant money, to meet the costs of §145.23(b)(2), identifying any restrictions or limitations upon this funding.	- Text of changes to existing funding (sources and amounts), identifying any restrictions or limitations upon this funding.
§145.23(c): Procedures	Description of applicable State procedures, including permitting procedures and any State administrative or judicial review procedures.	- Text of changes to existing State procedures to meet the new Class V rule

Minimum Federal Requirements for a UIC Program Description 40 CFR 145.23		
Federal Rule Citation	Portions of Minimum Federal Requirement That You Must Address	EPA's Expectation
§145.23(d): Forms	Copies of permit form(s), application form(s) and reporting form(s) the State intends to employ in its program. Forms need not be identical to EPA forms, but should require the same basic information. If using EPA forms, the State need not provide copies of the uniform national forms, but should note its intention to use them.	Copies of State forms that you will use to administer the new Class V rule
§145.23(e): Compliance Tracking and Enforcement	A complete description of the State's compliance tracking and enforcement program.	Text of changes to existing compliance tracking and enforcement programs
§145.23(f)(5): Rules	Description of any rule under which the Director proposes to authorize injections, including the text of the rule.	Text of changes to existing rules to reflect the new Class V rule ¹¹
§145.23(f)(7): Permitted Well Inventory	Description and schedule for State program to establish and maintain a current inventory of injection wells which must be permitted under State law.	Text of changes to reflect that certain radioactive waste disposal wells are reclassified as Class I wells to comply with new Class V rule
§145.23(f)(12): Plan for Delineation of Other Sensitive Ground Water Areas	Description and schedule for State plan to identify and delineate other sensitive ground water areas. Should consider: <ul style="list-style-type: none">- geologic and hydrogeologic settings- ground water flow and occurrence- topographic and geographic features- depth to ground water- significance as drinking water source- prevailing land use practices	Text of Plan. Alternately, a statement that you will apply the new requirements for motor vehicle waste disposal wells statewide by January 1, 2007.

¹¹ See: 40 CFR §§ 144.1, 144.3, 144.6, 144.23, 144.24, 144.26, 145.11, 145.23, 146.3, and 146.5 and 146.10 for new minimum Federal requirements for §1422 programs. See: Subpart G (new requirements for Class V well owners and operators).

Minimum Federal Requirements for a UIC Program Description 40 CFR 145.23		
Federal Rule Citation	Portions of Minimum Federal Requirement That You Must Address	EPA's Expectation
	<ul style="list-style-type: none">- any other existing information relating to susceptibility of ground water to contamination from Class V injection wells <p>Within plan schedule must commit to:</p> <ul style="list-style-type: none">- completing all delineations of other sensitive ground water areas by no later than January 1, 2004- making the delineations available to the public- implementing the Class V regulations, effective April 5, 2000, in these delineated areas by no later than January 1, 2007. <p>If a State chooses not to identify other sensitive ground water areas, the requirements for motor vehicle disposal wells would apply statewide by January 1, 2007.</p>	

The Primacy Revision Crosswalk will be used by the Agency to evaluate the stringency of the State regulations compared to the Federal regulations.

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Primacy Revision Crosswalk for the Class V Rule			
FEDERAL REQUIREMENT	FEDERAL CITATION	STATE CITATION Document title; page #; and § or ¶	If different than federal requirement, note here and explain on a separate sheet
allowance of Class IV remediation wells may not be expanded beyond CERCLA and RCRA cleanups.			
INVENTORY REQUIREMENTS Removal of radioactive waste disposal wells from Class V inventory well type list	§144.26(b)(1)(iii)(B)		
SUBPART G - REQUIREMENTS FOR OWNERS AND OPERATORS OF CLASS V INJECTION WELLS §144.79 - 144.89			
DEFINITION OF CLASS V INJECTION WELLS Class I Wells - radioactive waste disposal wells; Class V language updated. Class IV language here does not include CERCLA and RCRA remediation well authorization. APPLICABILITY Definition of motor vehicle waste disposal well. REQUIRING A PERMIT General Authorization by Rule. Rule must include exceptions of §144.84(b). Ban of New Large Capacity Cesspools and Motor Vehicle Disposal Wells; Closure Requirements for Large Capacity Cesspools and Closure and Permitting Requirements for Motor Vehicle Waste Disposal Wells.	§144.80(a)(3) §144.80(e) §144.81(16) §144.84(a) §144.84(b)(2)		

Primacy Revision Crosswalk for the Class V Rule			
FEDERAL REQUIREMENT	FEDERAL CITATION	STATE CITATION Document title; page #; and § or ¶	If different than federal requirement, note here and explain on a separate sheet
ADDITIONAL REQUIREMENTS FOR LARGE CAPACITY CESSPOOLS AND MOTOR VEHICLE WASTE DISPOSAL WELLS Applicability to Large Capacity Cesspools Applicability to Existing Motor Vehicle Waste Disposal Wells Applicability to New Motor Vehicle Waste Disposal Wells DEFINITIONS Ground Water Protection Areas. Definition must match language of Federal rule, such that the term corresponds to delineation of areas near and/or surrounding community and non-transient non-community water systems. Delineation Other Sensitive Ground Water Areas. If the State has other protected ground water areas, and it believes the definition meets the definition of "Other Sensitive Ground Water Areas", please provide the definition and a discussion per the right hand column of this form. APPLICABILITY OF GROUND WATER PROTECTION AREAS AND OTHER SENSITIVE GROUND WATER AREAS Applicability to Motor Vehicle Waste Disposal Wells	§144.85(a) §144.85(b) §144.85(c) 144.86(c) §144.86(f) §144.86(g) §144.87(a)		

Primacy Revision Crosswalk for the Class V Rule			
FEDERAL REQUIREMENT	FEDERAL CITATION	STATE CITATION Document title; page #; and § or ¶	If different than federal requirement, note here and explain on a separate sheet
<p>Requirements in Ground Water Protection Areas</p> <ul style="list-style-type: none"> • States required to complete delineation by January 1, 2004. • Motor Vehicle Disposal Well owners required to close or permit well within one year after a local assessment is completed. • If State does not meet January 1, 2004 deadline, requirements apply to all existing motor vehicle waste disposal wells in the state. • States may be able to receive a one year extension from EPA if making reasonable progress • 	§144.87(b)		
<p>Other Sensitive Ground Water Areas</p> <ul style="list-style-type: none"> • Delineation by January 1, 2004. • Existing motor vehicle waste disposal wells permitted or closed by January 1, 2007 (or 2008, with state extension). • Statewide implementation effective January 1, 2007 if delineations not completed on time. • Ground water protection areas subject to different compliance schedule (per §144.87(b)) • 	§144.87(c)		
<p>How owners and operators can determine location of ground water protection and other sensitive ground water areas.</p>	§144.87(d)		

Primacy Revision Crosswalk for the Class V Rule			
FEDERAL REQUIREMENT	FEDERAL CITATION	STATE CITATION Document title; page #; and § or ¶	If different than federal requirement, note here and explain on a separate sheet
Impact of Changes in Status of State Drinking Water Source Assessment and Protection Program on motor vehicle waste disposal wells owners and operators. Compliance with closure or permitting required within a year of delineation. One year extension possible for connection to sewer in treatment installation.	§144.87(e)		
ADDITIONAL REQUIREMENTS Large Capacity Cesspools: <ul style="list-style-type: none"> Existing wells closed by April 5, 2005 30-day pre-closure notification New construction prohibited as of April 5, 2000 	§144.88		
Motor Vehicle Waste Disposal Wells: <ul style="list-style-type: none"> In ground water protection area, close or obtain permit within 1 year of local source water assessment completion; subject to 1-year extension for connection to sewer or installation of treatment. In sensitive ground water area, close or obtain permit by January 1, 2007; no time extensions for permitting. 1-year extension available for connection to sewer or installation of treatment. Permitted wells and wells for which permit being sought must meet MCLs at point of injection. Comply with all permit conditions, including meet MCLs and other health based standards at point of injection , follow specified best management practices in 	§144.88		

Primacy Revision Crosswalk for the Class V Rule			
FEDERAL REQUIREMENT	FEDERAL CITATION	STATE CITATION Document title; page #; and § or ¶	If different than federal requirement, note here and explain on a separate sheet
<p>permit, and monitor injectate and sludge quality in accordance with permit conditions.</p> <ul style="list-style-type: none"> • If State does not complete ground water protection area delineations by January 1, 2004 (or January 1, 2005 with extension), obtain permit or close well by January 1, 2005, (or January 1, 2006 if state receives extension). 1-year extension available for connection to sewer or installation of treatment. • If State does not delineate other sensitive ground water areas by January 1, 2004, and well is not in a ground water protection area, obtain permit or close well by January 1, 2007 (or January 1, 2008 if State receives extension). • Notify State UIC Program at least 30 days prior to closing well. • New or converted wells prohibited effective April 5, 2000. 			
<p>Conversions of motor vehicle waste disposal wells to other well type requires segregation of all motor vehicle fluids by physical barriers and prohibits such fluids entering well. Injection of motor vehicle waste unlikely based on facility compliance history, and records demonstrating proper waste disposal. Semi-permanent plug not acceptable to qualify as conversion.</p>	§144.89(b)		

Appendix 9.3

State Primacy Revision Checklist

State Primacy Revision Checklist		
Required Program Elements	Revision to State Program (Yes or No)	EPA Findings/Comments
§144.1(f)(1)(vii) Class V Requirements		
§144.1(g)(1)(iii) Hazardous Waste Wells		
§144.1(g)(2)(v) Wells Not Used for Injection		
§144.3 New and Revised Definitions		
§144.6(a)(3) Class I Radioactive Waste Disposal Wells		
§144.6(e) Added Subpart G Reference		
§144.23(c) Allowable Class IV Wells		
§144.24(a) Class V Authorization Limitations		
§144.26(b)(1)(iii)(B) Reclassification of Radioactive Disposal Wells		
§144.26(e) Deletion of Former Class V Deadlines		
§144.79 General Class V Requirements		
§144.80 Definition of Class V Wells		
§144.81 Applicability		
§144.82 Requirements for All Class V Wells		
§144.83 Notification/Inventory		
§144.84 Permits and Authorization		
§144.85 Cesspool and Motor Vehicle Well Requirements		

State Primacy Revision Checklist		
Required Program Elements	Revision to State Program (Yes or No)	EPA Findings/Comments
§144.86 Definitions		
§144.87 Time Schedule for Ground Water Protection Areas and Sensitive Ground Water Areas		
§144.88 Specific Additional Cesspool and Motor Vehicle Waste Requirements		
§144.89 Well Closure		
§145.11(a)(32) Class V Permitting		
§145.11(b)(1) Regulations No Less Stringent		
§145.23(f)(12) Class V Sensitive Ground Water Area Delineation Plan Requirement		
§146.3 New and Revised Definitions		
§146.5(a)(3) Class I Radioactive Waste Disposal Wells		
§146.5(e) Subpart G Reference		
§146.10 Plugging and Abandonment		

MODEL ATTORNEY GENERAL'S STATEMENT

I hereby certify, pursuant to my authority as (1) and in accordance with Part C of the Safe Drinking Water Act (42 U.S.C. 300 f *et seq.*, as amended), and (2), that in my opinion the laws of [State / Commonwealth of] (3), provide adequate authority to apply / and carry out the program (42 U.S.C. 300h-1) set forth in the "Program Description" submitted by the (4). (In order for EPA to properly evaluate the State's request for approval, the State Attorney General or independent legal counsel should certify at this point that the State's environmental audit immunity and/or privilege and immunity law does not affect its ability to meet enforcement and information gathering requirements under the Safe Drinking Water Act.

Please read the information below on audit privileges certification:

Audit Privileges Certification

This certification should be reasonably consistent with the wording of the State audit laws and should demonstrate how State program approval criteria are satisfied. EPA will apply the criteria outlined in its "Statement of Principles" memo issued on 2/14/97 (See Appendix H) in determining whether States with audit laws have retained adequate enforcement authority for any authorized federal programs. The principles articulated in the guidance are based on the requirements of federal law, specifically the enforcement and compliance and State program approval provisions of environmental statutes and their corresponding regulations. The Principles provide that if provisions of State law are ambiguous, it will be important to obtain opinions from the State Attorney General or independent legal counsel interpreting the law as meeting specific federal requirements. If the law cannot be so interpreted, changes to State laws may be necessary to obtain federal program approval. Before submitting a Primacy Revision Application for approval, States with audit privilege and/or immunity laws should initiate communications with appropriate EPA Regional Offices to identify and discuss the issues raised by the State's audit privilege and/or immunity law.

Insert one of these options into the AG statement:

A. For States with No Audit Privilege and/or Immunity Laws:

Furthermore, I certify that [State / Commonwealth of (3)] has not enacted any environmental audit privilege and/or immunity laws

B. For States with Audit Laws that do Not Apply to the State Agency Administering the Safe Drinking Water Act :

Furthermore, I certify that the environmental [audit privilege and/or immunity law] of the [State / Commonwealth of (3)] does not affect (3) ability to meet enforcement and information gathering requirements under the Safe Drinking Water Act because the [audit privilege and/or immunity law] does not apply to the program set forth in the "Program Description." The Safe Drinking Water Act program set forth in the "Program Description" is administered by (4); the [audit privilege and/or immunity law]

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does not affect programs implemented by (4), thus the program set forth in the “Program Description” is unaffected by the provisions of [State / Commonwealth of (3)] [audit privilege and/or immunity law].

C. For States with Audit Privilege and/or Immunity Laws that Worked with EPA to Satisfy Requirements for Federally Authorized, Delegated or Approved Environmental Programs:

Furthermore, I certify that the environmental [audit privilege and/or immunity law] of the [State / Commonwealth of (3)] does not affect (3) ability to meet enforcement and information gathering requirements under the Safe Drinking Water Act because [State / Commonwealth of (3)] has enacted statutory revisions and/or issued a clarifying Attorney General’s statement to satisfy requirements for federally authorized, delegated or approved environmental programs.

After you have inserted A, B, or C, continue with AG statement:

The specific authorities cited below are contained in lawfully enacted statutes or promulgated regulations which will be in full force and effect on the date of approval of the program or program revision. These authorities include revisions to [3] existing *approved underground injection control* program to meet the new minimum Federal requirements for state UIC programs, published in the *Federal Register*, December 7, 1999:

Cite each revised statute and regulation or include the revised text of the relevant statutes and regulations, (or cite to the authorities described in the Primacy Revision Crosswalk if it contains this information and attach the Crosswalk to the Statement) and, where appropriate, cite or include each judicial decision which demonstrates that the program has authority to implement the revisions.

Seal of Office

Signature

Name and Title

Date

(1) State Attorney General or attorney for the primacy agency if it has independent legal counsel

(2) 40 CFR 145.22(a)(3) and 145.24 for initial primacy applications or §145.32(b)(1) for primacy program revision applications.

(3) Name of State or Commonwealth

(4) Name of Primacy Agency